HONOURABLE SRI JUSTICE A.GOPAL REDDY

W.P.No.23594 OF 2000

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DATED:29-08-2007

BETWEEN:

T.Ankama Raju

PETITIONER

AND

The Assistant Director of Fisheries,
Ongole, Prakasam District & others

RESPONDENTS.

HONOURABLE SRI JUSTICE A.GOPAL REDDY

W.P.No.23594 OF 2000

ORAL ORDER

By means of filing this Writ Petition under Article 226 of Constitution of India, petitioner seeks to declare the inaction on the part of the respondents in registering new Fishermen Cooperative Society with the petitioner and 89 others belong to Santha Nuthalapadu Village, Prakasam District by fixing local area of Santha Nuthalapadu or to bifurcate the Parent Society deleting the area of Santha Nuthalapadu under Sections 6,7,15,15-A & 17 of A.P. Cooperative Societies Act, 1964 as arbitrary, illegal, violative of Article 14, 19 (1)(g) & 21 of Constitution of India apart from the provisions of A.P. Cooperative Societies Act and the Rules made thereunder and consequently to issue a writ of *mandamus* for registration of new society at Santha Nuthalapadu.

Petitioner claims that he along with 89 others belong to

Vaddera, Yanadi, yerukala and Rajaka community of Santha Nuthalapadu Village & Mandal, Prakasam District, formed into an Association and made an application on 08.05.1990 to the Assistant Director of Fisheries, Ongole-first respondent herein for registration of the Fishermen Cooperative Society under the provisions of the A.P. Cooperative Societies Act, 1964 (for short 'the Act'). Since the said application has not evoked any response, further representations were made to the first respondent on 09.07.1990; 26.09.1990 & 21.11.1990. As there was no response from the first respondent, the petitioner made a representation to the Director of Fisheries-second respondent herein on 23.02.1991, who endorsed the said representation for registration of new society as per the existing procedure. Further, the second respondent, on 18.03.1991 issued proceedings directing the first respondent to send a detailed report. Even after lapse of five years, as the first respondent failed to consider the said representation, the petitioner filed a writ petition being W.P.No.20807 of 1996 and this Court disposed of the same on 12.12.1996 directing the respondents 1 & 2 to consider the application filed by the petitioner and dispose of the same in accordance with law within a period of two months from the date of receipt of copy of the order. In the light of the direction of this Court, the first respondent issued proceedings on 20.3.1997 intimating that pursuant to the orders of this Court in W.P.No.20807 of 1996, he appointed three-men Committee consisting of (1) Fisheries Development Officer, Ongole; (2) Junior Cooperative Inspector; & (3) Fisheries Development Officer, Darsi for conducting detailed enquiry to consider the application dated 08.05.1990 of the petitioner and 89 others in organization of Fishermen Cooperative Society at Santha Nuthalapadu and the said committee submitted their report on 18.3.1997 stating that on the date

when they fixed for testing the skills of petitioner and 89 others in fishing and the fishing implements possessed by them, only 24 applicants have attended the skill test, out of which, only 6 persons were found to be eligible and rest of them were found ineligible and therefore, the committee opined that it is not possible to organize a separate Fishermen Cooperative Society at Santha Nuthalapadu and requested the second respondent to enroll the said eligible 6 members in the existing Fishermen Cooperative Society, Ongole-third respondent society herein which is having area of operation of the village.

Subsequent to the proceedings of the first respondent dated 20.3.1997, the petitioner again submitted a representation to the second respondent on 20.7.1998 to re-consider the decision followed by another representation dated 09.06.1999. In view of the said representations, the second respondent through his proceedings dated 02.02.1999 directed the first respondent to explore the possibilities for registration of new Fishermen Cooperative Society at Santha Nuthalapadu Village & Mandal. Again the first respondent appointed a three-men Committee on 19.03.2000 consisting of (1) Fisheries Development Officer, Ongole; (2) President of Prakasam District Fishermen Cooperative Society; & (3) Cooperative Sub-Registrar to conduct skill test, examine residential certificate, water spread area, resolution from the General Body, proposed bye-laws signed by the promoters etc. Later, the first respondent directed the petitioner and others to be present at Pedda Cheruvu of Santha Nuthalapadu on 22.09.2000 at 11.00 a.m. to conduct skill test for the proposed registration of the society and accordingly, the petitioner and others were present on the said date, but the first respondent did not turn up

and adjourned the matter from time to time. Therefore, the petitioner filed the present writ petition.

In response to the Rule Nisi issued on 25.4.2001, the first respondent filed counter affidavit stating that on receipt of application of petitioner dated 09.07.1990, the then Assistant Director of Fisheries, Ongole endorsed the petition to the Inspector of fisheries, Ongole to enquire into the claim of the petitioner and submit a detailed report with regard to the feasibility for organization of separate Fishermen Cooperative society at Santha Nuthalapadu Village as per the viability norms. The Inspector, who conducted enquiry into the representation of the petitioner, submitted a report on 06.08.1990 stating that out of 135 applicants, 55 applicants have attended for enquiry and majority of persons applied for membership, belong to neither Fishermen community nor Fishing is their profession and therefore, recommended to defer the proposal of organization of Fishermen Cooperative Society. In pursuance of the orders passed by this Court in W.P.No.20807 of 1996, a three-men Committee was appointed consisting of (1) Fisheries Development Officer, Ongole; (2) Junior Cooperative Inspector; & (3) Fisheries Development Officer, Darsi to examine the application of the petitioner & 89 others dated 08.05.1990. The three-men Committee submitted a report stating that out of 89 applicants only 24 persons have attended to the skill test held on 03.03.1997 out of which, only 6 persons were having skill test and therefore, there is no possibility to organize the new Fishermen Cooperative Society at Santha Nuthalapadu as sufficient number of eligible applicants are not available, however, the committee advised the first respondent to enroll the selected 6 eligible applicants in the third respondent society, whose area of operation is extended to

Santha Nuthalapadu.

Again on receipt of instructions of Director of Fisheries, A.P., Hyderabad vide Memo No.5753/I2/99, dated 16.4.1999 along with the representation of the petitioner and others dated 10.3.1999, a three-men Committee was constituted with (1) Fisheries Development Officer, Ongole; (2) President of Prakasam District Fishermen Cooperative Society; & (3) Cooperative Sub-Registrar through proceedings in RC.No.855/B/99, dated 19.3.2000 for conducting skill test following the procedure in vogue and to submit their report with specific recommendation in organization of a separate Fishermen Cooperative Society at Santha Nuthalapadu Village. While so, the Commissioner of Fisheries, A.P., Hyderabad vide Memo No.5753/I2/99, dated 20.07.2000 directed the first respondent to include the Assistant Director of Fisharies, Ongole (first respondent) as another Committee member among three-men committee since the President, District Fishermen Cooperative Society, who is also a member among the three-men committee, is delaying the matter and not envisaging interest for bifurcation of the parent society and further directed to initiate immediate action to conduct the skill test and submit necessary proposals for organization of a separate fishermen Cooperative Society in Santha Nuthalapadu Village. The said Committee submitted its report on 01-02.2001 stating that notice was issued to the Chief Promoter (petitioner herein) on 22.9.2000 for attending skill test on 29.9.2000 along with other applicants while communicating the said notice to all the four committee members and Mandal Revenue Officers for giving wide publicity by way of beat of Tom-tom in the village about the organization of a Fishermen Cooperative Society at Santha Nuthalapadu. Accordingly the

committee conducted skill test on 29.09.2000, wherein 13 members were attended for the skill test out of 15 members who represented for the organization of the Society. Out of the said 13 attended persons, only one member namely; Indla Brahmaiah, S/o.Chinnabbi was qualified to become member of the proposed Society at Santha Nuthalapadu Village and the rest of the members were not qualified. Again as per the application made by 17 other applicants, schedule was fixed on 19.01.2001 for conducting the skill test and out of the 17 members, only 8 members have attended to the skill test and from them, three persons were qualified and the committee accordingly felt that with the 4 members (1+3) who were qualified on 29.09.2000 & 19.01.2001, it is not possible to organize a new society and if the qualified 4 persons are willing, they may be admitted as members of the parent Fishermen Cooperative Society i.e. the third respondent.

Learned counsel for the petitioner strenuously contends that under Section 6 of the A.P. Cooperative Societies Act the persons who are intending to form into a society, shall make an application for registration of a society to the Registrar, and if the applicants are individuals, the number of applicants shall not be less than ten, each being a member of a different family, and every one of them shall possess eligibility to become a member as required under sub-section (1) of Section 19. In the case on hand, the application for formation of a Fishermen Cooperative Society at Santha Nuthalapadu Village was made by petitioner and 89 others and therefore, it is incumbent upon the respondents to register the society and at the time of bifurcation of the society, with regard to the area of operation, they can follow the required procedure. Registration of a new Society for an area already served by an existing society, does not amount to division of area of operation of the existing society and at the time of registration,

procedure under Section 15 of the Act need not be followed. For the said proposition, the learned counsel placed reliance on a decision of the Division Bench of this Court reported in **The Vizianagaram Co-operative Land Mortgage Bank Ltd., Vizianagaram v. The Bheemunipatnam Co-operative Land Mortgage Bank Ltd.,** (1968 Andhra Weekly Reporter 52). He contends that the entire action of the respondent authorities in admitting the members who made representation for formation of a new society, to the third respondent Society and denying the claim of the petitioner is arbitrary and illegal.

On the other hand, learned Assistant Government Pleader for Fisheries contends that in pursuance of the directions of this Court in W.P.No.20807 of 1996 necessary skill test has been conducted and inasmuch as the eligible members are less than 10, separate society cannot be formed and the action taken by the respondents in not registering the new society cannot be said to be violative of Article 14, 19 and 21 of Constitution of India as alleged by the petitioner.

In the light of the above contentions, it is appropriate to refer the relevant provisions of the A.P. Cooperative Societies Act. Section 6 of the Act contemplates the procedure for making an application for registration of a Society. Such an application shall be made to the Registrar in such form and with such particulars as may, from time to time, be specified by the Registrar. Sub-section (2) of Section 6 reads as follows:

> "6 (2) Every such application shall conform to the following requirements namely:-
>
> (a) x x x x
>
> (i) x x x x
>
> (ii) x x x x
>
> (iii) x x x (omitted as not necessary)
>
> (b) Where all the applicants are individuals, the number of applicants shall not be less than ten, each being a member of a different family, and every one of them shall possess eligibility to become a member as required

under sub-section (1) of Section 19."

Section 19 (1) prescribes the eligibility for membership, which reads as under:

> "19. Eligibility for membership:- (1) Subject to the provisions of Section 21,-
>
> (a) an individual who attained majority and is of sound mind and who belongs to a class of persons, if any, for whom the society is formed as per its bye-laws and who possesses such qualifications as may be specified in the bye-laws or as may be prescribed for the concerned class of societies in the interest of Co-operative movement.
>
> (b) xxxxx
>
> (c) xxxxx (omitted as not necessary)"

The criteria of "eligibility of membership" in the words "the member who possesses such qualifications as may be specified in the bye-laws or as may be prescribed for the concerned class of societies in the interest of Co-operative movement" clearly goes to show that a member seeking admission into a society should possess such qualifications as may be specified in the bye-laws of that society or as may be prescribed for the concerned class of societies.

It is not in dispute that the petitioner is seeking to form a Fishermen Cooperative Society, which is a class of societies by itself, to serve the needs of Fishermen Community or to live by the said profession. The Director of Fisheries, Hyderabad through his Memo No.182/I(1)/97, dt.30.01.1997 issued instructions to all the Regional Deputy Directors of Fisheries and the Assistant Directors of Fisheries to ensure that the proposals are sent in a complete shape and contain the following certificates, particulars in support of their recommendations:

(1) Skill test report of the promoters of the proposed society conducted by the Committee constituted for the purpose (Committee should consist of two Inspectors of Fisheries invariably and Jr. Cooperative Inspector or any other person). The report should consist the date of test, place of test i.e., name of the tank with village name, place of test, and nets used and nets and

other fishing materials possessed by the promoters.

(2) Water Spread Area Certificate issued by the concerned Mandal Revenue Officer/Irrigation Department.

(3) Residential Certificate issued by the Mandal Revenue Officer/V.A.O./Sarpanch.

(4) Viability statement of the proposed society as per the norms prescribed in this office circular No.26130/I(1)/83, dated 23.12.1983.

(5) To (12) xxxxxxxxxxx (omitted as not necessary).

As can be seen from the above Memo, even much prior to the application of the petitioner and 89 others seeking formation of new Society, norms with regard to the viability statement of the proposed society were issued in Circular No.26130/I(1)/83, dated 23.12.1983. When the petitioner and 89 others made an application and subsequently skill test was conducted to know the viability of the new society, it is within the province of the respondent authorities to conduct a skill test to the members as to whether such a society can be formed with such eligible members, whether the society is a viable society or not, to take up further follow-up action viz; water spread area and copy of General Body resolution of the parental society (third respondent) agreeing for deletion of certain villages from the operation for such formation of new society, which is economically viable. It is also not in dispute that the entire water spread area where the petitioner wants to organize a new society already falls within the water spread area of third respondent society. In such a situation, unless the authorities satisfy that organizing the proposed society is viable with the water spread area in its area of operation, which is to be deleted from the parental society viz; third respondent society, which is in existence and serving the needs of the Fishermen Community in that area of operation, registration of a new society is not possible and it is not automatic on making an application. The authorities are bound to follow the mandatory provisions prescribed

under Section 19 (1) (a) of the Act i.e. whether the members are the concerned class of society for whose benefits the society is to be formed and that whether the members are eligible to serve the cooperative movement or not. Therefore, the petitioner will not have a vested right to get the proposed society registered. Unless there are requisite members and they are eligible to form themselves into such category of society, which can be fixed as per the norms prescribed by the Government, the petitioner cannot seek for formation of new society. Under these circumstances, the petitioner cannot complain any inaction on the part of the respondents in registering the society in the absence of a vested right under the Act. The rights under the Act are circumscribed with certain conditions have to be fulfilled for forming a new society. When the petitioner has not satisfied the norms prescribed, he cannot invoke the mandamus jurisdiction of this Court. Therefore, the writ petition is liable to be dismissed.

The Writ Petition is accordingly dismissed. No order as to costs.

AUGUST 29, 2007 A.GOPAL REDDY, J.

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